

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AL-NAJJAR, NAJAT, MUSTAFA, EVA and
NEVEEN.

No. C 05-00024 WHA

Petitioners,

v.

**ORDER DISMISSING HABEAS
CORPUS PETITION AND
VACATING HEARING**

JOHN ASHCROFT, Attorney General of the
United States, TOM RIDGE, Secretary of
Homeland Security, NANCY ALCANTAR,
et al.,

Respondents.

Petitioners have a habeas petition pending before the Court. On March 29, 2005, the Board of Immigration Appeals granted petitioners' motion to reopen based on ineffective assistance of counsel and remanded deportation proceedings to the California Executive Office for Immigration Review


Given this latest development, this Court determines that it no longer has jurisdiction to conduct any further proceedings despite petitioners' request for the Court to retain jurisdiction. Prudentially, we require a petitioner who argues ineffective assistance of counsel to exhaust his administrative remedies by first presenting the issue to the BIA. *Ontiveros- Lopex v. Immigration and Naturalization Service*, 213 F.3d 1121, 1124 (9th Cir. 2000). By the very nature of the claim, the BIA would not have had the opportunity to consider a claim of ineffective assistance of counsel absent a motion to reopen. Therefore, the BIA now will have the opportunity to fully develop the record and consider the claim in light of its agency expertise.

1 Depending on the result of the BIA proceeding, petitioners may seek an appeal in
2 federal court and seek to relate case to the undersigned.

3 Based on the foregoing, the Court **DISMISSES** petitioner's habeas corpus petition,
4 **VACATES** the hearing scheduled for May 12, 2005, and **ORDERS** the clerk to **CLOSE** the file.

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6 **IT IS SO ORDERED.**

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8 Dated: May 10, 2005.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE